

TECHNICAL MEMORANDUM

Utah Coal Regulatory Program

November 20, 2008

TO: Internal File

THRU: Jim Smith, Permit Supervisor *DS 04/09/09*

FROM: Priscilla Burton, Environmental Scientist III *Priscilla SCS*

SUBJECT: MidTerm Review, UtahAmerican Energy, Inc., Horse Canyon Mine, C/007/0013, Task ID #3042

SUMMARY:

The mid-term review for the Horse Canyon mine was initiated on September 8, 2008. This memo documents the Division's evaluation of the ownership and control information and AVS status for the mine operation as specified in Item #4 of the mid-term review letter.

The following deficiencies were identified with the MRP:

The officers and directors of Murray Energy Holdings, Inc was not included with the original application, but was provided prior to permit issuance (2007\Incoming\document 0263.pdf). This information was not incorporated into the MRP at the time of permit issuance and should be incorporated at this time in the Salt Lake copy of the MRP.

R645-301-112, Please update the organizational chart in Appendix 1-1 to include Murray Energy Holdings, Inc.

R645-301-113.300, In conjunction with the detailed design change amendment to the MRP (Task 3017), please update Appendix 1-3 to include the violation records for all affiliates during the years 2007 and 2008.



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TECHNICAL ANALYSIS:

GENERAL CONTENTS

IDENTIFICATION OF INTERESTS

Regulatory Reference: 30 CFR 773.22; 30 CFR 778.13; R645-301-112

Analysis:

UtahAmerican Energy Inc. (UEI), is a corporation organized and existing under the laws of the State of Utah. UEI is 100% owned by Murray Energy Corporation, a subsidiary of Murray Energy Holdings, Inc. Ownership and Control information is provided in Appendix 1-1. The officers and directors of Murray Energy Holdings, Inc was not included with the original application, but was provided prior to permit issuance (2007\Incoming\document 0263.pdf). This information was not incorporated into the MRP at the time of permit issuance and should be incorporated with this mid-term review.

Appendix 1-2 lists the federal ID numbers and Permit ID numbers of all affiliated companies.

Findings:

The officers and directors of Murray Energy Holdings, Inc was not included with the original application, but was provided prior to permit issuance (2007\Incoming\document 0263.pdf). This information was not incorporated into the MRP at the time of permit issuance and should be incorporated with this mid-term review. In accordance with:

R645-301-112, Please update the organizational chart in Section 1, Appendix 1-1 to include Murray Energy Holdings, Inc.

VIOLATION INFORMATION

Regulatory Reference: 30 CFR 773.15(b); 30 CFR 773.23; 30 CFR 778.14; R645-300-132; R645-301-113

Analysis:

Appendix 1-3 Part B contains violation information, which was current through the year 2006. In conjunction with the detailed design change amendment to the MRP (Task 3017), the

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Division has requested that Appendix 1-3 requires be updated for the years 2007 and 2008. The deficiency is repeated below.

An AVS check was conducted on November 20, 2008. As of this writing of this memo, there are no NOVs or COs which are not corrected or in the process of being corrected for the UtahAmerican Energy, Inc controlled mines. There are no bond forfeitures or civil penalties in the name of UtahAmerican Energy, Inc.

Findings:

The information provided does not meet the reporting requirements. Prior to approval, the application must include the following in accordance with:

R645-301-113.300, In conjunction with the detailed design change amendment to the MRP (Task 3017), please update Appendix 1-3 to include the violation records for all affiliates during the years 2007 and 2008.

PERMIT TERM

Regulatory References: 30 CFR 778.17; R645-301-116.

Analysis:

The five-year permit for the UEI Horse Canyon Mine was issued on May 18, 2007. The permit will expire in May 2012. The permit has four permit conditions.

The first condition is to submit water quality data in an electronic format.

The second condition was to obtain mining plan approval. The recent decision by U.S. District Court Judge Kimball upheld the authority of the Secretary of Interior's previous Mining Plan Approval, dated November 5, 2001 (Memorandum of Decision and Order, Case 2:07CV678 DAK, United States District Court for the District of Utah, Central Division, dated November 13, 2008).

The third condition was to provide required information concerning raptors, water depletions, and cultural resources within 30 days of permit approval.

The fourth condition was to provide within 30 days of approval, the Programmatic Agreement and associated information, to conduct annual raptor surveys beginning in 2005, to adhere to raptor exclusionary periods, to illustrate raptor nests within the subsidence zone and

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provide corrections to Chapter 3 of the MRP with regard to the effects of subsidence on raptor nests.

The Permittee has observed wildlife and raptor exclusionary periods during construction (Part B, Sec. 330, Sec. 322.220, Sec. 330, Sec. 358.100); and has salvaged cryptogams for use on the topsoil stockpile.

Several commitments listed in Attachment 2 to the Division's Technical Analysis were to be completed within one year after permit issuance:

1. Provide a copy of the mitigation/recovery survey to DOGM, Part B, Section 411.142.
2. Implement the BLM's 70+ acre enhancement/mitigation plan for wildlife
3. Install two guzzlers (Sec. 322.220 and Sec. 333).
4. Conduct a Seep and Spring survey
5. Install two rain gauges
6. Install crest gauges and siphon samplers
7. Survey for sensitive plants (Sec. 321.100) and provide follow up report and protection plan.

Three commitments written in the MRP pertain to the protection of soil resources. They are: to have a qualified soil specialist on site during soil salvage, to salvage soil during optimum moisture content, and to keep records of soil volumes salvaged and locations of subsoil placement.

Findings:

With regard to wildlife and raptor exclusionary periods and cryptogam salvage, the Horse Canyon Mine is operating in compliance with the Utah Coal Rules. Reviewers of the biology, archaeology and hydrology Rules, should analyze and write findings with regard to the Special Conditions and commitments listed above, pertaining to each of those disciplines.

ENVIRONMENTAL RESOURCE INFORMATION

Regulatory Reference: Pub. L 95-87 Sections 507(b), 508(a), and 516(b); 30 CFR 783., et. al.

PERMIT AREA

Regulatory Requirements: 30 CFR 783.12; R645-301-521.

Analysis:

The UEI Horse Canyon Mine MRP Part A was reclaimed. A Phase III bond release application is currently under review (Task 3080). The lease area for Part A is 1,327.75 acres. The permit area for Part A is 74.26 acres.

The permit issued on May 18, 2007 was for a total permit area of 5,992.07 acres with a total surface disturbed area of 99.56 acres. The new permit includes the Lila Canyon Extension facilities (described in Part B of the MRP) to be constructed to mine coal from six federal leases totaling 4,664.32 acres in within the "North Block Logical Mining Unit" as approved by the BLM, January 1, 1994 and upheld by United States District Judge Kimball (Memorandum of Decision and Order, Case 2:07CV678 DAK, United States District Court for the District of Utah, Central Division, dated November 13, 2008).

The total bonded area for Horse Canyon Parts A and B is 6032.07 acres (Ex. A Reclamation Agreement). A 42.6 acre bonded disturbed area for Part B is outlined on Plate 5-2 (Section 521.163).

Only minor surface disturbance occurred at the Lila Canyon site in 2007 and 2008, due to wildlife exclusionary periods, pending litigation, and limited funding for the Emery County access road. As of this date, the Emery County road has been graded to the mine site and the U.S. District Court decided in favor of mine development.

Findings:

The Horse Canyon Mine is operating in compliance with the Utah Coal Rules.

RECLAMATION PLAN

BONDING AND INSURANCE REQUIREMENTS

Regulatory Reference: 30 CFR Sec. 800; R645-301-800, et seq.

Analysis:

General

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Lincoln General Insurance Co. was issued on September 15, 1998 for Horse Canyon facilities (Part A) and was decreased by rider effective July 23, 2002 to its present amount of \$1,061,328. The Division notified the Permittee by letter dated October 8, 2008, that the rating of Lincoln General had fallen below that required by R645-301-860.110 and requested some action be taken to achieve compliance within 120 days (Feb. 2009). On November 10, 2008, the Permittee filed an application for Phase III bond release for the Part A bonded area which is under review as Task 3080.

XL Specialty Insurance Co. bond in the amount of \$1,556,000 was issued July 13, 2001 for the Horse Canyon Part B.

Rockwood Casualty Insurance Co. bond in the amount of \$130,000.00 was issued December 7, 2005.

The total of the XL Specialty and Rockwood Casualty bonds is \$1,686,000, all of which is for reclamation of the Lila Canyon Extension, Part B.

The total of all three bonds for the Horse Canyon and the Lila Canyon Extension is \$2,747,328.00.

MRP Part B, Appendix 8-1 provides documentation for the Lila Canyon Extension \$1,686,000.00 bond. The bond was posted in May 2007. A pending amendment (Task 3017) to revise the layout and construction of the site will increase the bond to \$1,855,000.00, which will require an increase of \$169,000 upon approval.

Form of Bond

There are three Surety bonds.

Determination of Bond Amount

Appendix 8-1.

Terms and Conditions for Liability Insurance

Appendix 8-2 and 8-3 provide the liability insurance coverage in effect at the time permit issuance. Inspection report #1805 confirms that liability coverage remains in effect.

Findings:

The Division notified the Permittee by letter dated October 8, 2008, that the rating of Lincoln General had fallen below that required by R645-301-860.110 and requested some action be taken to achieve compliance within 120 days (February 2009). On November 10, 2008, the Permittee filed an application for Phase III bond release for the Part A bonded area which is under review as Task 3080.

RECOMMENDATIONS:

Further information is requested of the Permittee for a complete Mining and Reclamation Plan.

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